

## Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

### §63.70 Applicability.

The provisions of this subpart apply to an owner or operator of an existing source who wishes to obtain a compliance extension from a standard issued under section 112(d) of the Act. The provisions of this subpart also apply to a State or local agency acting pursuant to a permit program approved under title V of the Act. The Administrator will carry out the provisions of this subpart for any State that does not have an approved permit program.

### §63.71 Definitions.

All terms used in this subpart not defined in this section are given the same meaning as in the Act.

*Act* means the Clean Air Act as amended.

*Actual emissions* means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

*Artificially or substantially greater emissions* means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

*EPA conditional method* means any method of sampling and analyzing for air pollutants that has been validated by the Administrator but that has not been published as an EPA Reference Method.

*EPA reference method* means any method of sampling and analyzing for an air pollutant as described in appendix A of part 60 of this chapter, appendix B of part 61 of this chapter, or appendix A of part 63.

*Equipment leaks* means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

*Existing source* means any source as defined in §63.72, the construction or reconstruction of which commenced prior to proposal of an applicable section 112(d) standard.

*Hazardous air pollutant (HAP)* means any air pollutant listed pursuant to section 112(b) of the Act.

*High-risk pollutant* means a hazardous air pollutant listed in Table 1 of §63.74.

*Malfunction* means any sudden failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

*Not feasible to prescribe or enforce a numerical emission limitation* means a situation in which the Administrator or a State determines that a pollutant (or stream of pollutants) listed pursuant to section 112(b) of the Act cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal law; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

*Permitting authority* means either a State agency with an approved permitting program under Title V of the Act or the Administrator in cases where the State does not have an approved permitting program.

*Post-reduction year* means the one year period beginning with the date early reductions have to be achieved to qualify for a compliance extension under subpart D of this part, unless a source has established with the permitting authority an earlier one year period as the post-reduction year. For most sources, the post-reduction year would begin with the date of proposal of the first section 112(d) standard applicable to the early reductions source; however, for sources that have made enforceable commitments, it would be the year from January 1, 1994, through December 31, 1994.

*Responsible official* means one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority.

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

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(3) For a municipality, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

*Reviewing agency* means a State agency with an approved permitting program under Title V of the Act. An EPA Regional Office is the reviewing agency where the State does not have such an approved permitting program.

*State* means a State or local air pollution control agency.

[57 FR 61992, Dec. 29, 1992, as amended at 59 FR 59924, Nov. 21, 1994]

### § 63.72 General provisions for compliance extensions.

(a) Except as provided in paragraph (f) of this section, a permitting authority acting pursuant to a permitting program approved under Title V of the Act shall by permit allow an existing source to meet an alternative emission limitation in lieu of an emission limitation promulgated under section 112(d) of the Act for a period of 6 years from the compliance date of the otherwise applicable standard provided the source owner or operator demonstrates:

(1) According to the requirements of § 63.74 that the source has achieved a reduction of 90 percent (95 percent or more in the case of hazardous air pollutants which are particulates) in emissions of:

(i) Total hazardous air pollutants from the source;

(ii) Total hazardous air pollutants from the source as adjusted for high-risk pollutant weighting factors, if applicable.

(2) That such reduction was achieved before proposal of an applicable standard or, for sources eligible to qualify for an alternative emission limitation as specified in paragraph (c) of this section, before January 1, 1994.

(b) A source granted an alternative emission limitation shall comply with an applicable standard issued under section 112(d) of the Act immediately upon expiration of the six year compliance extension period specified in paragraph (a) of this section.

(c) An existing source that achieves the reduction specified in paragraph (a)(1) of this section after proposal of an applicable section 112(d) standard but before January 1, 1994, may qualify for an alternative emission limitation under paragraph (a) of this section if the source makes an enforceable commitment, prior to proposal of the applicable standard, to achieve such reduction. The

enforceable commitment shall be made according to the procedures and requirements of § 63.75.

(d) For each permit issued to a source under paragraph (a) of this section, there shall be established as part of the permit an enforceable alternative emission limitation for hazardous air pollutants reflecting the reduction which qualified the source for the alternative emission limitation.

(e) An alternative emission limitation shall not be available with respect to standards or requirements promulgated to provide an ample margin of safety to protect public health pursuant to section 112(f) of the Act, and the Administrator will, for the purpose of determining whether a standard under section 112(f) of the Act is necessary, review emissions from sources granted an alternative emission limitation under this subpart at the same time that other sources in the category or subcategory are reviewed.

(f) Nothing in this subpart shall preclude a State from requiring hazardous air pollutant reductions in excess of 90 percent (95 percent in the case of particulate hazardous air pollutants) as a condition of such State granting an alternative emission limitation authorized in paragraph (a) of this section.

### § 63.73 Source.

(a) An alternative emission limitation may be granted under this subpart to an existing source. For the purposes of this subpart only, a source is defined as follows:

(1) A building structure, facility, or installation identified as a source by the EPA in appendix B of this part;

(2) All portions of an entire contiguous plant site under common ownership or control that emit hazardous air pollutants;

(3) Any portion of an entire contiguous plant site under common ownership or control that emits hazardous air pollutants and can be identified as a facility, building, structure, or installation for the purposes of establishing standards under section 112(d) of the Act; or

(4) Any individual emission point or combination of emission points within a contiguous plant site under common control, provided that emission reduction from such point or aggregation of points constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous plant site.

(b) For purposes of paragraph (a)(4) of this section, emissions reductions are considered significant if they are made from base year emissions of not less than:

(1) A total of 10 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous plant site is greater than 25 tons per; or

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(2) A total of 5 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous plant site is less than or equal to 25 tons per year.

### **§ 63.74 Demonstration of early reduction.**

(a) An owner or operator applying for an alternative emission limitation shall demonstrate achieving early reductions as required by § 63.72(a)(1) by following the procedures in this section.

(b) An owner or operator shall establish the source for the purposes of this subpart by documenting the following information:

(1) A description of the source including: a site plan of the entire contiguous plant site under common control which contains the source, markings on the site plan locating the parts of the site that constitute the source, and the activity at the source which causes hazardous air pollutant emissions;

(2) A complete list of all emission points of hazardous air pollutants in the source, including identification numbers and short descriptive titles; and

(3) A statement showing that the source conforms to one of the allowable definition options from § 63.73. For a source conforming to the option in § 63.73(a)(4), the total base year emissions from the source, as determined pursuant to this section, shall be demonstrated to be at least:

(i) 5 tons per year, for cases in which total hazardous air pollutant emissions from the entire contiguous plant site under common control are 25 tons per year or less as calculated under paragraph (1) of this section; or

(ii) 10 tons per year in all other cases.

(c) An owner or operator shall establish base year emissions for the source by providing the following information:

(1) The base year chosen, where the base year shall be 1987 or later except that the base year may be 1985 or 1986 if the owner or operator of the source can demonstrate that emission data for the source for 1985 or 1986 was submitted to the Administrator pursuant to an information request issued under section 114 of the Act and was received by the Administrator prior to November 15, 1990;

(2) The best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (c)(2) of this section including:

(i) For test results submitted as the supporting basis, a description of the test protocol followed,

any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used; and

(4) Evidence that the emissions provided under paragraph (c)(2) of this section are not artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

(d) An owner or operator shall establish post-reduction emissions by providing the following information:

(1) For the emission points listed in the source in paragraph (b)(2) of this section, a description of all control measures employed to achieve the emission reduction required by § 63.72(a)(1);

(2) The best available data accounting for actual emissions, during the year following the applicable emission reduction deadline as specified in § 63.72(a)(2), of all hazardous air pollutants from each emission point in the source listed pursuant to paragraph (b)(2) of this section.

(3) The supporting basis for each emission number provided in paragraph (d)(2) of this section including:

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used;

(4) [Reserved]

(5) Evidence that there was no increase in radionuclide emissions from the source.

(e)(1) An owner or operator shall demonstrate that both total base year emissions and total base year emissions adjusted for high-risk pollutants, as applicable, have been reduced by at least 90 percent for gaseous hazardous air pollutants emitted and 95 percent for particulate hazardous air pollutants emitted by determining the following for gaseous and particulate emissions separately:

(i) Total base year emissions, calculated by summing all base year emission data from paragraph (c)(2) of this section;

(ii) Total post-reduction emissions, calculated by summing all post-reduction emission data from paragraph (d)(2) of this section;

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(iii) (If applicable) Total base year emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (c)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 in paragraph (f) of this section and then summing all weighted emission data;

(iv) (If applicable) Total post-reduction emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (d)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 and then summing all weighted emission data; and

(v) Percent reductions, calculated by dividing the difference between base year and post-reduction emissions by the base year emissions. Separate demonstrations are required for total gaseous and particulate emissions, and total gaseous and particulate emissions adjusted for high-risk pollutants.

(2) If any points in the source emit both particulate and gaseous pollutants, as an alternative to the demonstration required in paragraph (e)(1) of this section, an owner or operator may demonstrate:

(i) A weighted average percent reduction for all points emitting both particulate and gaseous pollutants where the weighted average percent reduction is determined by

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where %<sub>w</sub>=the required weighted percent reduction

ΣM<sub>g</sub>=the total mass rate (e.g., kg/yr) of all gaseous emissions

ΣM<sub>p</sub>=the total mass rate of all particulate emissions and,

(ii) The reductions required in paragraph (e)(1) of this section for all other points in the source.

(f) If lower rates or hours are used to achieve all or part of the emission reduction, any hazardous air pollutant emissions that occur from a compensating increase in rates or hours from the same activity elsewhere within the plant site which contains the source shall be counted in the post-reduction emissions from the source. If emission reductions are achieved by shutting down process equipment and the shutdown equipment is restarted or replaced anywhere within the plant site, any hazardous air pollutant emissions from the restarted or replacement equipment shall be counted in the post-reduction emissions for the source.

TABLE 1—LIST OF HIGH-RISK POLLUTANTS

CAS No.	Chemical	Weighting factor
53963 .....	2-Acetylaminofluorene .....	100
107028 .....	Acrolein .....	100
79061 .....	Acrylamide .....	10
107131 .....	Acrylonitrile .....	10
0 .....	Arsenic compounds .....	100

TABLE 1—LIST OF HIGH-RISK POLLUTANTS—Continued

CAS No.	Chemical	Weighting factor
1332214 .....	Asbestos .....	100
71432 .....	Benzene .....	10
92875 .....	Benzidine .....	1000
0 .....	Beryllium compounds .....	10
542881 .....	Bis(chloromethyl) ether .....	1000
106990 .....	1,3-Butadiene .....	10
0 .....	Cadmium compounds .....	10
57749 .....	Chlordane .....	100
532274 .....	2-Chloroacetophenone .....	100
0 .....	Chromium compounds .....	100
107302 .....	Chloromethyl methyl ether .....	10
0 .....	Coke oven emissions .....	10
334883 .....	Diazomethane .....	10
132649 .....	Dibenzofuran .....	10
96128 .....	1,2-Dibromo-3-chloropropane ....	10
111444 .....	Dichloroethyl ether (Bis(2-chloroethyl) ether) .....	10
79447 .....	Dimethylcarbamoyl chloride .....	100
122667 .....	1,2-Diphenylhydrazine .....	10
106934 .....	Ethylene dibromide .....	10
151564 .....	Ethylenimine (Aziridine) .....	100
75218 .....	Ethylene oxide .....	10
76448 .....	Heptachlor .....	100
118741 .....	Hexachlorobenzene .....	100
77474 .....	Hexachlorocyclopentadiene .....	10
302012 .....	Hydrazine .....	100
0 .....	Manganese compounds .....	10
0 .....	Mercury compounds .....	100
60344 .....	Methyl hydrazine .....	10
624839 .....	Methyl isocyanate .....	10
0 .....	Nickel compounds .....	10
62759 .....	N-Nitrosodimethylamine .....	100
684935 .....	N-Nitroso-N-methylurea .....	1000
56382 .....	Parathion .....	10
75445 .....	Phosgene .....	10
7803512 .....	Phosphine .....	10
7723140 .....	Phosphorus .....	10
75558 .....	1,2-Propylenimine .....	100
1746016 .....	2,3,7,8-Tetrachlorodibenzo-p-dioxin.	100,000
8001352 .....	Toxaphene (chlorinated camphene).	100
75014 .....	Vinyl chloride .....	10

(g) The best available data representing actual emissions for the purpose of establishing base year or post-reduction emissions under this section shall consist of documented results from source tests using an EPA Reference Method, EPA Conditional Method, or the owner's or operator's source test method which has been validated pursuant to Method 301 of appendix A of this part. However, if one of the following conditions exists, an owner or operator may submit, in lieu of results from source tests, calculations based on engineering principles, emission factors, or material balance data as actual emission data for establishing base year or post-reduction emissions:

(1) No applicable EPA Reference Method, EPA Conditional Method, or other source test method exists;

(2) It is not technologically or economically feasible to perform source tests;

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(3) It can be demonstrated to the satisfaction of the reviewing agency that the calculations will provide emission estimates of accuracy comparable to that of any applicable source test method;

(4) For base year emission estimates only, the base year conditions no longer exist at an emission point in the source and emission data could not be produced for such an emission point, by performing source tests under currently existing conditions and converting the test results to reflect base year conditions, that is more accurate than an estimate produced by using engineering principles, emission factors, or a material balance; or

(5) The emissions from one or a set of emission points in the source are small compared to total source emissions and potential errors in establishing emissions from such points will not have a significant effect on the accuracy of total emissions established for the source.

(h) For base year or post-reduction emissions established under this section that are not supported by source test data, the source owner or operator shall include the reason source testing was not performed.

(i) [Reserved]

(j) The EPA average emission factors for equipment leaks cannot be used under this subpart to establish base year emissions for equipment leak sources, unless the base year emission number calculated using the EPA average emission factors for equipment leaks also is used as the post-reduction emission number for equipment leaks from the source.

(k) A source owner or operator shall not establish base year or post-reduction emissions that include any emissions from the source exceeding allowable emission levels specified in any applicable law, regulation, or permit condition.

(l) For sources subject to paragraph (b)(3)(i) of this section, an owner or operator shall document total base year emissions from an entire contiguous plant site under common control by providing the information required pursuant to paragraphs (b)(2), (c)(2), and (e)(1)(i) of this section for all hazardous air pollutants from all emission points in the contiguous plant site under common control.

(m) If a new pollutant is added to the list of hazardous air pollutants or high-risk pollutants, any source emitting such pollutant will not be required to revise an early reduction demonstration pursuant to this section if:

(1) Alternative emission limits have previously been specified by permit for the source as provided for in § 63.72(a); or

(2) The base year emissions submitted in an enforceable commitment have previously been approved by the reviewing agency.

[57 FR 61992, Dec. 29, 1992, as amended at 58 FR 62543, Nov. 29, 1993; 59 FR 53110, Oct. 21, 1994]

### § 63.75 Enforceable commitments.

(a) To make an enforceable commitment an owner or operator shall submit a commitment to achieve the early reductions required under § 63.72(a)(1) to the appropriate EPA Regional Office and a copy of the commitment to the appropriate State, except that the commitment shall be submitted to the State and a copy to the EPA Regional Office if the State has an approved permitting program under Title V of the Act. A copy shall also be submitted to both the EPA Stationary Source Compliance Division (EN-341W), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD-13), Research Triangle Park, NC 27711; attention both to the Early Reductions Officer. The commitment shall contain:

(1) The name and address of the source;

(2) The name and telephone number of the source owner or operator or other responsible official who can be contacted concerning the commitment;

(3) An alternative mailing address if correspondence is to be directed to a location other than that given in paragraph (a)(1) of this section;

(4) All information specified in § 63.74(b), (c) and (e)(1)(i), which defines and describes the source and establishes the base year hazardous air pollutant emissions from the source;

(5) The general plan for achieving the required hazardous air pollutant emissions reductions at the source including descriptions of emission control equipment to be employed, process changes or modifications to be made, and any other emission reduction measures to be used; and

(6) A statement of commitment, signed by a responsible official of the source, containing the following:

(i) A statement providing the post-reduction emission levels for total hazardous air pollutants and high-risk pollutants, as applicable, from the source on an annual basis which reflect a 90 percent (95 percent for particulate pollutants) reduction from base year emissions;

(ii) A statement certifying that the base year emission data submitted as part of the enforceable commitment constitute the best available data for base year emissions from the source, are correct to the best of the responsible official's knowledge, and are within allowable levels specified in any applicable law, regulation, or permit;

(iii) A statement that it is understood by the source owner or operator that submission of base

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year emissions constitutes a response to an EPA request under the authority of section 114 of the Act and that the commitment is subject to enforcement according to § 63.80; and

(iv) A statement committing the source owner or operator to achieving the emission levels, listed in paragraph (a)(6), (i) of this section, at the source before January 1, 1994.

(b) The following language may be used to satisfy the requirements of paragraphs (a)(6)(ii) through (a)(6)(iv) of this section:

I certify to the best of my knowledge that the base year emissions given above are correct and constitute the best available data for base year emissions from the source, and acknowledge that these estimates are being submitted in response to an EPA request under section 114 of the Act. I further certify that the base year emissions provided for all emission points in the source do not exceed allowable emission levels specified in any applicable law, regulation, or permit condition. I commit to achieve before January 1, 1994, the stated post-reduction emission level(s) at the source, which will provide the 90 (95) percent reduction required to qualify for the compliance extension, and acknowledge that this commitment is enforceable as specified in title 40, part 63, subpart D, of the Code of Federal Regulations.

(c) A commitment for a source shall be submitted prior to proposal of an applicable standard issued under section 112(d) of the Act. Commitments received after the proposal date shall be void.

(d) If test results for one or more emission points in a source are required to support base year emissions in an enforceable commitment but are not available prior to proposal of an applicable standard issued under section 112(d) of the Act, the test results may be submitted after the enforceable commitment is made but no later than 180 days after proposal of an applicable standard. In such cases, the enforceable commitment shall contain the best substitute emission data for the points in the source for which test results will be submitted later.

(e) An owner or operator may rescind such a commitment prior to December 1, 1993 without penalty and forfeit the opportunity to obtain a six year compliance extension under this subpart.

(f) An enforceable commitment submitted under this section shall not be in effect and enforceable until the base year emissions contained in the commitment have been approved according to the procedures in § 63.76. An owner or operator is under no obligation to continue to seek approval of commitments that have not been approved by December 1, 1993.

(g) The control measure information required under § 63.74(d)(1) as part of post-reduction emission documentation and submitted in a permit application according to the provisions of § 63.77 shall become part of an existing enforceable com-

mitment upon receipt of the permit application by the permitting authority. An owner or operator shall notify the permitting authority of any change made to the source during calendar year 1994 which affects such control measure information and shall mail the notice within 5 days (postmark date) of making the change. The notice shall be considered an amendment to the source's enforceable commitment.

[57 FR 61992, Dec. 29, 1992, as amended at 58 FR 34370, June 25, 1993; 58 FR 62543, Nov. 29, 1993; 59 FR 59924, Nov. 21, 1994]

## § 63.76 Review of base year emissions.

(a) Pursuant to the procedures of this section, the appropriate reviewing agency shall review and approve or disapprove base year emission data submitted in an enforceable commitment under § 63.75 or in a request letter from an applicant that wishes to participate in the early reduction program but who is not required to submit an enforceable commitment. For review requests submitted to a State agency as the appropriate reviewing agency, a copy of the request also shall be submitted to the applicable EPA Regional Office. For review requests submitted to the EPA Regional Office as the appropriate reviewing agency, a copy of the request also shall be sent to the applicable State agency. Copies also shall be submitted to the EPA Stationary Source Compliance Division (EN-341W), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD-13), Research Triangle Park, NC 27711; to the attention of the Early Reductions Officer.

(b) Within 30 days of receipt of an enforceable commitment or base year emission data, the reviewing agency shall advise the applicant that:

(1) The base year emission data are complete as submitted; or

(2) The base year emission data are not complete and include a list of deficiencies that must be corrected before review can proceed.

(c) EPA will publish a notice in the FEDERAL REGISTER which contains a list, accumulated for the previous month, of the sources for which complete base year emission data have been submitted and which are undergoing review either in the EPA Regional Office or a State agency within the EPA region. The notice will contain the name and location of each source and a contract in the EPA Regional Office for additional information.

(d) Within 60 days of a determination that a base year emission data submission is complete, the reviewing agency shall evaluate the adequacy of the submission with respect to the requirements of § 63.74 (b) and (c) and either:

(1) Determine to approve the submission and publish a notice in a newspaper of general circula-

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tion in the area where the source is located or in a State publication designed to give general public notice, providing the aggregate base year emission data for the source and the rationale for the proposed approval, noting the availability of the nonconfidential information contained in the submission for public inspection in at least one location in the community in which the source is located, providing for a public hearing upon request by an interested party, and establishing a 30 day public comment period that can be extended to 60 days upon request by an interested party; or

(2) Determine to disapprove the base year emission data and give notice to the applicant of the reasons for the disapproval. An applicant may correct disapproved base year data and submit revised data for review in accordance with this subsection, except that the review of a revision shall be accomplished within 30 days.

(e) If no adverse public comments are received by the reviewing agency on proposed base year data for a source, the data shall be considered approved at the close of the public comment period and a notice of the approval shall be sent to the applicant and published by the reviewing agency by advertisement in the area affected.

(f) If adverse comments are received and the reviewing agency agrees that corrections are needed, the reviewing agency shall give notice to the applicant of the disapproval and reasons for the disapproval. An applicant may correct disapproved base year emission data and submit revised emission data. If a revision is submitted by the applicant that, to the satisfaction of the reviewing agency, takes into account the adverse comments, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and send notice of the approval to the applicant.

(g) If adverse comments are received and the reviewing agency determines that the comments do not warrant changes to the base year emission data, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and the reasons for not accepting the adverse comments. A notice of the approval also shall be sent to the applicant.

(h) If an applicant submits revised emission data under paragraph (d)(2) or (f) of this section for a source subject to an enforceable commitment, the applicant also shall submit an amended enforceable commitment which takes into account the revised base year emissions.

(i) If revised base year emission data are not submitted or notice of intent to submit revised data is not provided to the permitting authority by an applicant within 90 days of receiving adverse comments or a notice of disapproved base year

emission data for a source that is subject to an enforceable commitment, the enforceable commitment shall be considered withdrawn and a notice to that effect shall be sent by the reviewing agency to the applicant.

### § 63.77 Application procedures.

(a) To apply for an alternative emission limitation under § 63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) Except as provided in paragraph (e) of this section, the permit application shall contain the information required by § 63.74, as applicable, and the additional information required for a complete permit application as specified by the applicable permit program established pursuant to title V of the Act.

(c) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(1) 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act; or

(2) 120 days after the date an applicable permit program is approved or established pursuant to title V of the Act.

(d) Permit applications for sources subject to enforceable commitments pursuant to § 63.75 shall be submitted no later than April 30, 1994.

(e) If the post-reduction year does not end at least one month before the permit application deadline under paragraph (c) of this section, the source may file the post-reduction emissions information required under § 63.74(d)(2), (d)(3), and (d)(5) later as a supplement to the original permit application. In such cases, this supplemental information shall be submitted to the permitting authority no later than one month after the end of the post-reduction year.

(f) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the applicable deadline for submittal of a permit application as specified in paragraph (c) or (d) of this section.

(g) Review and disposition of permit applications submitted under this section will be accomplished according to the provisions of the applicable permit program established pursuant to title V of the Act.

[58 FR 62543, Nov. 29, 1993, as amended at 59 FR 59924, Nov. 21, 1994]

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### § 63.78 Early reduction demonstration evaluation.

(a) The permitting authority will evaluate an early reduction demonstration submitted by the source owner or operator in a permit application with respect to the requirements of § 63.74.

(b) An application for a compliance extension may be denied if, in the judgement of the permitting authority, the owner or operator has failed to demonstrate that the requirements of § 63.74 have been met. Specific reasons for denial include, but are not limited to:

(1) The information supplied by the owner or operator is incomplete;

(2) The required 90 percent reduction (95 percent in cases where the hazardous air pollutant is particulate matter) has not been demonstrated;

(3) The base year or post-reduction emissions are incorrect, based on methods or assumptions that are not valid, or not sufficiently reliable or well documented to determine with reasonable certainty that required reductions have been achieved; or

(4) The emission of hazardous air pollutants or the performance of emission control measures is unreliable so as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period.

### § 63.79 Approval of applications.

(a) If an early reduction demonstration is approved and other requirements for a complete permit application are met, the permitting authority shall establish by a permit issued pursuant to title V of the Act enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the extension. However, if it is not feasible to prescribe a numerical emissions limitation for one or more emission points in the source, the permitting authority shall establish such other requirements, reflecting the reduction which qualified the source for an extension, in order to assure the source achieves the 90 percent or 95 percent reduction, as applicable.

(b) An alternative emissions limitation or other requirement prescribed pursuant to paragraph (a) of this section shall be effective and enforceable immediately upon issuance of the permit for the source and shall expire exactly six years after the compliance date of an otherwise applicable standard issued pursuant to section 112(d) of the Act.

### § 63.80 Enforcement.

(a) All base year or post-reduction emissions information described in § 63.74 and required to be submitted as part of a permit application under

§ 63.77 or an enforceable commitment under § 63.75 shall be considered to have been requested by the Administrator under the authority of section 114 of the Act.

(b) Fraudulent statements contained in any base year or post-reduction emissions submitted to a State or EPA Regional Office under this subpart shall be considered violations of section 114 of the Act and of this subpart and, thus, actionable under section 113 of the Act and can be considered, in appropriate cases, violations of 18 U.S.C. 1001, the general false swearing provision of the United States Code.

(c) If a source subject to an enforceable commitment fails to achieve reductions before January 1, 1994, sufficient to qualify the source for an extension under this subpart, the source shall be considered to be in violation of the commitment and shall be subject to enforcement action under section 113 of the Act.

(d) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source not subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard.

(e) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source that is subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard and will be subject to enforcement action under section 113 of the Act.

(f) A violation of an alternative emission limitation or other requirement established by permit under § 63.79 (a) or (b) for the source is enforceable pursuant to the authority of section 113 of the Act notwithstanding any demonstration of continuing 90 percent (95 percent for hazardous air pollutants which are particulates) emission reduction over the entire source.

### § 63.81 Rules for special situations.

(a) If more than one standard issued under section 112(d) of the Act would be applicable to a source as defined under § 63.73, then the date of proposal referred to in §§ 63.72(a)(2), 63.72(c), 63.74(d)(4), 63.75(c), and 63.77(c) is the date the first applicable standard is proposed.

(b) Sources emitting radionuclides are not required to reduce radionuclides by 90 (95) percent. Radionuclides may not be increased from the source as a result of the early reductions demonstration.